



THE CITY OF NEW YORK
LAW DEPARTMENT

100 CHURCH STREET
NEW YORK, NY 10007

Susan P. Scharfstein
Special Federal Litigation Division
212-227-4071
Facsimile: (212) 788-9776
sscharfs@law.nyc.gov

MEMO ENDORSED

September 7, 2007

BY HAND

Honorable Denise Cote
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: <u>9/11/07</u>

Re: Chris Sforza v. City of New York, et al., 07 CV 6122 (DLC)

Dear Judge Cote:

I am an attorney in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, counsel for defendant City of New York in the above-referenced action brought pursuant to 42 U.S.C. § 1983. I write with reference to defendant's response to the complaint, which is currently due on September 24, 2007, to request an adjournment, because defendant City of New York has not yet received from plaintiff a properly-executed authorization for release of records pursuant to New York Criminal Procedure Law § 160.50. After conferring with plaintiff's counsel, she has advised me that plaintiff will produce the necessary release on or before September 14, 2007. On that basis, defendant City of New York requests that the Court allow it an additional forty-five days in which to respond to the allegations of the complaint to October 31, 2007, and the initial conference now set for October 5, 2007, at 9:30 a.m., be adjourned to a date thereafter.¹ Plaintiff's counsel and counsel for co-defendant McDonald's have advised me that they consent to these requests.

¹ During the middle and latter parts of October, I will be preparing for trial and/or on trial in an unrelated matter now pending in the Eastern District of New York, that is scheduled to commence on October 22, 2007. Accordingly, I ask that defendant City be permitted an enlargement to answer to October 31, 2007, as I anticipate that the trial will conclude within that time frame.

On June 29, 2007, plaintiff brought this action alleging false arrest, excessive force, and related claims in connection with an incident that took place on or about July 10, 2006, allegedly involving New York City police officers. On July 19, 2007, defendant City of New York requested a sixty-day extension of time in which to respond to the complaint until September 24, 2007. The Court granted that application. We requested the enlargement, in part, so that we could forward to plaintiff for her execution an authorization for release of underlying police and criminal records that may have been sealed pursuant to NYCPL § 160.50. We need this release in order to respond the allegations of the complaint in keeping with our obligations pursuant to Rule 11 of the Federal Rules of Civil Procedure. Although we forwarded blank release forms to plaintiff's counsel on July 24, 2007, and again on August 14, 2007, we did not receive the executed release. Accordingly, on September 7, 2007, I telephoned plaintiff's counsel to discuss this matter. As indicated above, Ms. Weber has advised me that she expects to produce the release by September 14, 2007. Once I receive the release, I anticipate that some additional time will be needed to obtain the necessary documents relating to plaintiff's arrest and prosecution, and to prepare defendant's response to the complaint.

I note also that, plaintiff's counsel has advised me that plaintiff intends to amend her complaint within the next two weeks to substitute a different McDonald's entity as a defendant in this action, as she apparently has not named the correct corporate entity. Accordingly, all defendants can then respond to the amended complaint.

For these reasons, we request that defendant City of New York be permitted an additional forty-five days after plaintiff produces the NYCPL § 160.50 release on September 14, 2007, in which to respond to the allegations of the complaint, to October 31, 2007. We ask also that the initial conference now set for October 5, 2007, at 9:30 a.m., be adjourned to a date after issue has been joined as to all defendants.

Thank you for your consideration herein.

Respectfully submitted,

Susan P. Scharfstein

Granted. Conference is adjourned
to October 26 at 3⁰⁰ p.m.

Quinn O'Brien
September 11, 2007

cc: Rose M. Weber, Esq.
Attorney for Plaintiff
225 Broadway, Suite 1608
New York, NY 10007
(by hand)

Ewan Clark, Esq.
Bonner Kiernan Trebach & Crociata, LLP
Empire State Building, Suite 3304
New York, NY 10118
(by hand)